

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number	10/058,175	Confirmation No.:	3199
Applicant	Joshua Gee-Yuen MAHOWALD <i>et al.</i>		
Filed	January 29, 2002		
Title	SYSTEM AND METHOD FOR INTERACTIVE VOICE SERVICES USING MARKUP LANGUAGE WITH N-BEST FILTER ELEMENT		
TC/Art Unit	2626		
Examiner:	Brian Louis Albertalli		
Docket No.	53470.009005		
Customer No.	21967		

Mail Stop: Appeal Brief--Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

REPLY BRIEF

In response to the Examiner's Answer dated July 23, 2007, maintaining the rejection of pending claims 1-18, Appellants respectfully submit the following reply brief.

I. Status Of Claims

Claim Rejections - 35 U.S.C. § 101

Claims 7-12 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim Rejections - 35 U.S.C. § 112

Claims 1 and 7 stand rejected under 35 U.S.C. 112 first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claims 1-7 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 1, 2, 4, 5, 7, 8 and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Motorola (VoxML 1.1 Language Reference) (“VoxML”) in view of U.S. Patent No. 6,449,496 to Beith *et al.* (“Beith”).

Claims 6 and 12 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over VoxML in view of Beith and in further view of Applicant’s Admitted Prior Art (“AAPA”).

Claims 13-17 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over VoxML in view of Beith and in further view of U.S. Patent No. 6,269,336 to Ladd *et al.* (“Ladd”).

Claim 18 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over VoxML in view of Beith and in further view of Ladd and further view of AAPA.

The rejection of claims 1-18 is appealed.

II. Grounds Of Rejection To Be Reviewed On Appeal

The following grounds of rejection are to be reviewed on appeal:

(1) The rejection of Claims 7-12 under 35 U.S.C. §101 because the claimed invention is directed to a non-statutory subject matter.

(2) The rejection of Claims 1 and 7 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

(3) The rejection of Claims 1-7 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(4) The rejection of Claims 1, 2, 4, 5, 7, 8 and 11 under 35 U.S.C. §103(a) as being unpatentable over Motorola (VoxML 1.1 Language Reference) in view of U.S. Patent No. 6,449,496 to Beith.

(5) The rejection of Claims 6 and 12 under 35 U.S.C. §103(a) as being unpatentable over Motorola (VoxML 1.1 Language Reference) in view of U.S. Patent No. 6,449,496 to Beith further in view of Applicant's Admitted Prior Art.

(6) The rejection of Claims 13-17 under 35 U.S.C. §103(a) as being unpatentable over Motorola (VoxML 1.1 Language Reference) in view of U.S. Patent No. 6,449,496 to Beith further in view of U.S. Patent No. 6,269,336 to Ladd.

(7) The rejection of Claim 18 under 35 U.S.C. §103(a) as being unpatentable over Motorola (VoxML 1.1 Language Reference) in view of U.S. Patent No. 6,449,496 to Beith further in view of Applicant's Admitted Prior Art.

III. Argument

A. The Rejection of Claims 1-12 Under 35 U.S.C. §101 is Improper

Claim 7 clearly includes limitation of “an active voice page in a computer-readable storage medium for use in an interactive voice output,” therefore the plurality of elements claimed in claim 7 define a series of acts to perform a “process” of an interactive voice output. Furthermore, the Examiner’s Answer alleges that claim 7 directs to a non-statutory matter because the claimed invention is directed to the voice page itself (i.e. programming code of the page) rather than the computer readable medium. Appellants respectfully submit that claim 7 specifically recites “an active voice page in a computer readable storage medium” and therefore claim 7 is directed to the active voice page in a computer readable storage medium and not solely on the active voice page. In addition, the Examiner alleges that “a computer readable storage medium comprising an active voice page” falls under statutory matter while “an active voice page in a computer readable storage medium” falls outside of the statutory matter. Appellants respectfully submit that the “a computer readable storage medium comprising an active voice page” is equivalent to “an active voice page in a computer readable storage medium” and the two phrases are merely different construction to express the same conceptual idea.

Therefore, Appellants respectfully submit that the claims 7-12 are adequately directed to patentable subject matter in their present form. Accordingly, claim 7-12 are directed to a statutory subject matter and for at least the above reasons Appellants respectfully request that the rejection under 35 U.S.C. §101 of Claims 7-12 be withdrawn.

B. The Rejection of Claims 1 and 7 Under 35 U.S.C. §112, first paragraph, is Improper

The specification clearly recites that the markup language can be “adapted to enable systems to communicate” (page 2), where such systems include various types of computer

servers, such as call servers, web servers, voice service servers, remote servers, etc. Appellants respectfully submit that the specification discloses the markup language can be adapted to enable computer servers to communicate with other servers. Therefore, the markup language for facilitating voice-enabled communication may be used in a tangible “computer-readable storage medium.” Therefore, the rejections of claims under §112, first paragraphs are improper and should be withdrawn.

C. The Rejection of Claims 1-7 Under 35 U.S.C. §112, second paragraph, is Improper

As stated in MPEP §2173.04, breadth of a claim is not to be equated with indefiniteness. In re Miller, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph. Accordingly, the Applicant has clearly set forth the metes and bounds of the claim.

“In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue.” Purdue Pharma L.P. v. Faulding, Inc., 230 F.3d 1320, 1323, 56 USPQ2d 1481, 1483 (Fed. Cir. 2000). In other words, as stated in MPEP § 2163.02, the fundamental factual inquiry is whether a claim defines an invention that is clearly conveyed to those skilled in the art at the time the application was filed. The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. In this case, one skilled in the art at the time of the application was filed would clearly understand that a markup language for facilitating voice-enabled communication may be used in a tangible

“computer-readable storage medium.” Claim 1 clearly recites “a computer-readable storage medium comprising code programmed in a markup language for facilitating voice-enabled communication,” and claims 2-6 also recites “the markup language of claim 1.” Therefore, it is clear that Appellants are attempting to claim “a computer-readable storage medium comprising code” in claim 1. Accordingly the metes and bounds of the claimed computer readable storage medium may be readily discernable to those skilled in the art at the time the application was filed. Therefore, the rejections of claims under §112, second paragraphs are improper and should be withdrawn.

D. The Rejection of Claims 1-5 and 7-11 Under 35 U.S.C. §103(a) is Improper

In regards to claim 1, while the Office recognizes that the Motorola reference does not disclose or suggest an n-best list filter element in an XML-based language structure as recited in the claims, it presumes that Beith remedies this deficiency because it alleges “a method for requesting verification from a list of possible matches for an audibly-uttered user response”. *See* Office Action at p. 8. However, Applicants respectfully submit that **Beith does not disclose, suggest, or even contemplate “an n-best list filter element”**. The Examiner’s Answer asserts that Beith discloses a method for requesting verification from a list of possible matches for an audibly-uttered user response, however Beith still does not disclose “an n-best list filter element.” The Examiner’s Answer attempts to equate Beith’s method to “an n-best list filter element,” based on an erroneous assumption that just because two elements perform the same function, the two elements must be the same element. Therefore, the mere disclosure of a method for requesting verification from a list is not the same as an n-best list filter element recited in the claims. Accordingly, Applicants respectfully submit that not all of the claimed limitations are taught in the references.

The Examiner's Answer asserts that modifying the Motorola reference to include the n-best list filter feature would have been obvious "because such feedback greatly improves the accuracy and increases the user confidence in the system." See Office Action at p. 8. However, such a statement represents classic impermissible hindsight. The Examiner's Answer fails to provide any *evidence* as to why one of ordinary skill in the art would choose to implement the n-best list element in the way claimed. Instead, the Examiner's Answer relies on hindsight conjecture. Apparently, the Office Action's statement that it would greatly improve accuracy and increase user confidence in the system is wholly unsupported by Motorola or Beith. Although the Office attempts to use the Balentine reference as a source of motivation to combine Motorola and Beith, the reference was clearly "not relied upon" by the Office. As a result, none of the references specifically cited in the Office's rejection states anywhere that there is an advantage in adding an element in the XML-based language.

1. Claim 2 is Separately Patentable

Claim 2 is separately patentable because Motorola in view of Beith fails to disclose *the n-best filter element operates to cause processing system to generate a list of possible matches for a received audible utterance*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 1. Motorola in view of Beith fails to show each and every limitation of claim 2. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 2 be withdrawn.

2. Claim 3 is Separately Patentable

The Examiner's Answer withdraw rejections of claim 3 and therefore changing the scope of the rejection. Appellants respectfully submit that the Final Rejection issued on October 19, 2006 be withdrawn. Claims 3 is separately patentable because there is no disclosure that the "*n-best filter element comprises a namespace attribute that stores results from a grammar that are confirmed as not matching the utterance*". The Examiner erroneously presumes that the Beith reference "must necessarily store the results that are confirmed as not matching the utterance so that each possible recognition candidate is only presented one time to the user," specifically on page 9 of the Office Action dated October 19, 2006. The Beith reference merely teaches in Figure 7B, step 344 that VR checks to see if all matches have been queried and if all matches have not been queried, the VR will retrieve the next best match. *See* column 10, lines 5-11. Nowhere does the Beith reference teaches or suggests a namespace attribute that stores results from a grammar that are not confirmed as not matching the utterance. In addition, the Beith reference teaches away from the erroneous presumption alleged by the Examiner by sequentially prompting the next best name match therefore the Beith reference does not need to store the result from a grammar that are not confirmed as not matching the utterance. Moreover, the Beith reference does not teach the necessity of storing the results from a grammar that are confirmed as not matching the utterance, it may simply discard the results from a grammar that are confirmed as not matching the utterance. Therefore, the presumption made by the Examiner that the Beith reference must necessarily store the results that are confirmed as not matching the utterance is erroneous and baseless. Accordingly, the rejection of claim 3 is improper for the reasons set forth above and there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 3 be withdrawn.

3. Claim 4 is Separately Patentable

Claim 4 is separately patentable because Motorola in view of Beith fails to disclose *the n-best filter element comprises an expression attribute that specifies a portion on an input element to be confirmed with the user*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 1. Motorola in view of Beith fails to show each and every limitation of claim 4. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 4 be withdrawn.

4. Claim 5 is Separately Patentable

Claim 5 is separately patentable because Motorola in view of Beith fails to disclose *the n-best filter element specifies a loop to go through the list of possible matches for the utterance*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 1. Motorola in view of Beith fails to show each and every limitation of claim 5. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 5 be withdrawn.

5. Claim 7 is Separately Patentable

In regards to claim 1, while the Office recognizes that the Motorola reference does not disclose or suggest an n-best list filter element in an XML-based language structure as recited in the claims, it presumes that Beith remedies this deficiency because it alleges "a method for

requesting verification from a list of possible matches for an audibly-uttered user response”. *See* Office Action at p. 8. However, Applicants respectfully submit that **Beith does not disclose, suggest, or even contemplate “an n-best list filter element”**. The Examiner’s Answer asserts that Beith discloses a method for requesting verification from a list of possible matches for an audibly-uttered user response, however Beith still does not disclose “an n-best list filter element.” The Examiner’s Answer attempts to equate Beith’s method to “an n-best list filter element,” based on an erroneous assumption that just because two elements perform the same function, the two elements must be the same element. Therefore, the mere disclosure of a method for requesting verification from a list is not the same as an n-best list filter element recited in the claims. Accordingly, Applicants respectfully submit that not all of the claimed limitations are taught in the references.

The Examiner’s Answer asserts that modifying the Motorola reference to include the n-best list filter feature would have been obvious “because such feedback greatly improves the accuracy and increases the user confidence in the system.” *See* Office Action at p. 8. However, such a statement represents classic **impermissible hindsight**. The Examiner’s Answer fails to provide any *evidence* as to why one of ordinary skill in the art would choose to implement the n-best list element in the way claimed. Instead, the Examiner’s Answer relies on hindsight conjecture. Apparently, the Office Action’s statement that it would greatly improve accuracy and increase user confidence in the system is wholly unsupported by Motorola or Beith. Although the Office attempts to use the Balentine reference as a source of motivation to combine Motorola and Beith, the reference was clearly “not relied upon” by the Office. As a result, none of the references specifically cited in the Office’s rejection states anywhere that there is an advantage in adding an element in the XML-based language.

6. Claim 8 is Separately Patentable

Claim 8 is separately patentable because Motorola in view of Beith fails to disclose *the n-best filter element operates to cause processing system to generate a list of possible matches for a received audible utterance*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 7. Motorola in view of Beith fails to show each and every limitation of claim 8. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 8 be withdrawn.

7. Claim 9 is Separately Patentable

The Examiner's Answer withdraw rejections of claim 9 and therefore changing the scope of the rejection. Appellants respectfully submit that the Final Rejection issued on October 19, 2006 be withdrawn. Claims 9 is separately patentable because there is no disclosure that the "*n-best filter element comprises a namespace attribute that stores results from a grammar that are confirmed as not matching the utterance*". The Examiner erroneously presumes that the Beith reference "must necessarily store the results that are confirmed as not matching the utterance so that each possible recognition candidate is only presented one time to the user," specifically on page 9 of the Office Action dated October 19, 2006. The Beith reference merely teaches in Figure 7B, step 344 that VR checks to see if all matches have been queried and if all matches have not been queried, the VR will retrieve the next best match. *See* column 10, lines 5-11. Nowhere does the Beith reference teaches or suggests a namespace attribute that stores results from a grammar that are not confirmed as not matching the utterance. In addition, the Beith reference teaches away from the erroneous presumption alleged by the Examiner by sequentially

prompting the next best name match therefore the Beith reference does not need to store the result from a grammar that are not confirmed as not matching the utterance. Moreover, the Beith reference does not teach the necessity of storing the results from a grammar that are confirmed as not matching the utterance, it may simply discard the results from a grammar that are confirmed as not matching the utterance. Therefore, the presumption made by the Examiner that the Beith reference must necessarily store the results that are confirmed as not matching the utterance is erroneous and baseless. Accordingly, the rejection of claim 9 is improper for the reasons set forth above and there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 9 be withdrawn.

8. Claim 10 is Separately Patentable

Claim 10 is separately patentable because Motorola in view of Beith fails to disclose *the n-best filter element comprises an expression attribute that specifies a portion on an input element to be confirmed with the user*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 7. Motorola in view of Beith fails to show each and every limitation of claim 10. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 10 be withdrawn.

9. Claim 11 is Separately Patentable

Claim 11 is separately patentable because Motorola in view of Beith fails to disclose *the n-best filter element specifies a loop to go through the list of possible matches for the utterance*.

The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 7. Motorola in view of Beith fails to show each and every limitation of claim 11. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 11 be withdrawn.

E. The Rejection of Claims 6 and 12 Under 35 U.S.C. §103(a) is Improper

The Examiner's Answer asserts that because Appellants' response (filed July 5, 2005) contained no request for evidence to support the Official Notice statement, therefore the Office Notice Statement becomes common knowledge or well-known in the art statement and taken to be admitted prior art. According to MPEP 2144.03 "official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be *rare when an application is under final rejection* or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known;" and "it would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." In addition, MPEP 2144.03 clearly states "it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." Appellants respectfully submit that the claim limitation of claims 6 and 12 are not capable of instant and unquestionable demonstration of being well-known. Therefore, the Examiner's

Answer erroneously alleged that claims 6 and 12 are old and well known without the support of evidence.

Furthermore, the Office Action's modification of Motorola and Beith in view of the other cited references – AAPA – suffers from similar flaws stated above in claim 1. For example, in claims 6 and 12, the Office acknowledges that neither Motorola nor Beith discloses “an error announcement is made when a match is not found.” See Office Action on p. 10. The PTO asserts that AAPA remedies this deficiency because it is supposedly “notoriously well known...to provide the user with an announcement that no match has been found, such as “I did not understand” or requesting the user to repeat the utterance”. See Office Action at p. 10. However, AAPA does not disclose the recitation as alleged by the Office nor does the AAPA support this conclusion as a whole. Rather, Applicants respectfully submit that the PTO gleaned from Applicant's Detailed Description on page 2, the only section that recites “I did not understand”, to improperly construct the motivation. Thus, absent further evidence, the Office has clearly failed to meet its *prima facie* burden.

For at least the above reasons Appellants respectfully request that the rejection of Claims 6 and 12 be withdrawn.

F. The Rejection of Claims 13-17 Under 35 U.S.C. §103(a) is Improper

Claim 13, recites “at least one dialog element contained within a container element.” The Examiner simply fails to address such recitation in the Office Action. Furthermore, Motorola fails to disclose or suggest at least one dialog element contained within a container element. Thus, Applicant respectfully request that the rejection of Claim 13 be withdrawn.

The Examiner's answer alleges that when the VoXML server of Ladd executed the XML-based page contents disclosed by the combination of VoXML and Beith, the call server would

necessarily perform the actions of receiving input from the user, and prompting the user to verify possible matches for audibly- uttered user responses that were not understood based on the XML-based page contents. Appellants respectfully submit that the Examiner's Answer erroneously assumed the VoxML server of Ladd is *capable and/or necessarily* performs the claimed functions. The Examiner's Answer failed to offered evidence from Ladd that may demonstrate that the VoxML server of Ladd is capable of excute the XML-based page contents disclosed by the actions of VoxML and Beith. Furthermore, the Examiner's answer fails to offer evidence from Ladd that may demonstrate that the VoxML server of Ladd necessarily perform the claimed function. Instead, Ladd merely teaches a communicate node 212 and not a call server to perform the claimed functions.

First, while the Office recognizes that the Motorola reference does not disclose or suggest an n-best list filter element in an XML-based language structure as recited in the claims, it presumes that Beith remedies this deficiency because it alleges "a method for requesting verification from a list of possible matches for an audibly-uttered user response". See Office Action at p. 8. However, Applicants respectfully submit that **Beith does not disclose, suggest, or even contemplate "an n-best list filter element"**. The Examiner's Answer asserts that Beith discloses a method for requesting verification from a list of possible matches for an audibly- uttered user response, however Beith still does not disclose "an n-best list filter element." The Examiner's Answer attempts to equate Beith's method to "an n-best list filter element," based on an erroneous assumption that just because two elements perform the same function, the two elements must be the same element. Therefore, the mere disclosure of a method for requesting verification from a list is not the same as an n-best list filter element recited in the claims.

Accordingly, Applicants respectfully submit that not all of the claimed limitations are taught in the references.

Second, while the Office also recognizes that the Motorola reference and the Beith reference does not disclose or suggest a XML-based page is executed in a caller server as recited in the claims, it presumes that Ladd reference remedies this deficiency because it alleges “a call server that engages in a user in a dialog based on the content of VoxML voice pages.” *See* Office Action at p. 12. However, Applicant respectfully submit that Ladd fails to remedy such deficiency. The Ladd reference fails to teach a call server that receives input from a user and prompts the user to verify possible matches for audibly-uttered user responses that are not understood based on the XML-based page contents but rather teaches a communication node respond to the user based on the retrieved information. In addition, Ladd reference fails to teach or suggest the XML-based page contents are executed in the call server, therefore the Ladd reference fails to remedy the deficiencies of the Motorola reference and the Beith reference.

Third, the Examiner’s Answer asserts that modifying the Motorola reference to include the n-best list filter feature would have been obvious “because such feedback greatly improves the accuracy and increases the user confidence in the system.” *See* Office Action at p. 8. However, such a statement represents classic **impermissible hindsight**. The Examiner’s Answer fails to provide any *evidence* as to why one of ordinary skill in the art would choose to implement the n-best list element in the way claimed. Instead, the Examiner’s Answer relies on hindsight conjecture. Apparently, the Office Action’s statement that it would greatly improve accuracy and increase user confidence in the system is wholly unsupported by Motorola or Beith. Although the Office attempts to use the Balentine reference as a source of motivation to combine Motorola and Beith, the reference was clearly “not relied upon” by the Office. As a result, none

of the references specifically cited in the Office's rejection states anywhere that there is an advantage in adding an element in the XML-based language.

1. Claim 14 is Separately Patentable

Claim 14 is separately patentable because Motorola in view of Beith and in further view of Ladd fails to disclose *the n-best filter element operates to cause processing system to generate a list of possible matches for a received audible utterance*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 13. Motorola in view of Beith and in further view of Ladd fails to show each and every limitation of claim 14. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 14 be withdrawn.

2. Claim 15 is Separately Patentable

The Examiner's Answer withdraw rejections of claim 15 and therefore changing the scope of the rejection. Appellants respectfully submit that the Final Rejection issued on October 19, 2006 be withdrawn. Claims 15 is separately patentable because there is no disclosure that the *"n-best filter element comprises a namespace attribute that stores results from a grammar that are confirmed as not matching the utterance"*. The Examiner erroneously presumes that the Beith reference "must necessarily store the results that are confirmed as not matching the utterance so that each possible recognition candidate is only presented one time to the user," specifically on page 9 of the Office Action dated October 19, 2006. The Beith reference merely teaches in Figure 7B, step 344 that VR checks to see if all matches have been queried and if all matches have not been queried, the VR will retrieve the next best match. See column 10, lines 5-

11. Nowhere does the Beith reference teaches or suggests a namespace attribute that stores results from a grammar that are not confirmed as not matching the utterance. In addition, the Beith reference teaches away from the erroneous presumption alleged by the Examiner by sequentially prompting the next best name match therefore the Beith reference does not need to store the result from a grammar that are not confirmed as not matching the utterance. Moreover, the Beith reference does not teach the necessity of storing the results from a grammar that are confirmed as not matching the utterance, it may simply discard the results from a grammar that are confirmed as not matching the utterance. Therefore, the presumption made by the Examiner that the Beith reference must necessarily store the results that are confirmed as not matching the utterance is erroneous and baseless. Accordingly, the rejection of claim 15 is improper for the reasons set forth above and there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 15 be withdrawn.

3. Claim 16 is Separately Patentable

Claim 16 is separately patentable because Motorola in view of Beith and in further view of Ladd fails to disclose *the n-best filter element comprises an expression attribute that specifies a portion on an input element to be confirmed with the user*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 13. Motorola in view of Beith and further view of Ladd fails to show each and every limitation of claim 16. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 16 be withdrawn.

4. Claim 17 is Separately Patentable

Claim 17 is separately patentable because Motorola in view of Beith and in further view of Ladd fails to disclose *the n-best filter element specifies a loop to go through the list of possible matches for the utterance*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 13. Motorola in view of Beith and in further view of Ladd fails to show each and every limitation of claim 17. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of Claim 17 be withdrawn.

G. The Rejection of Claim 18 Under 35 U.S.C. §103(a) is Improper

The Examiner's Answer asserts that because Appellants' response (filed July 5, 2005) contained no request for evidence to support the Official Notice statement, therefore the Office Notice Statement becomes common knowledge or well-known in the art statement and taken to be admitted prior art. According to MPEP 2144.03 "official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be *rare when an application is under final rejection* or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known;" and "it would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of

instant and unquestionable demonstration as being well-known.” In addition, MPEP 2144.03 clearly states “it is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” Appellants respectfully submit that the claim limitation of claims 6 and 12 are not capable of instant and unquestionable demonstration of being well-known. Therefore, the Examiner’s Answer erroneously alleged that claims 6 and 12 are old and well known without the support of evidence.

The Office Action’s modification of Motorola and Beith and Ladd in view of the other cited references – AAPA – suffers from similar flaws stated above in claim 13. For example, in claim 18, the Office acknowledges that neither Motorola, Beith nor Ladd discloses “an error announcement is made when a match is not found.” See Office Action on p. 14. The PTO asserts that AAPA remedies this deficiency because it is supposedly “notoriously well known...to provide the user with an announcement that no match has been found, such as “I did not understand” or requesting the user to repeat the utterance”. See Office Action at p. 14. However, AAPA does not disclose the recitation as alleged by the Office nor does the AAPA support this conclusion as a whole. Rather, Applicants respectfully submit that the PTO gleaned from Applicant’s Detailed Description on page 2, the only section that recites “I did not understand”, to improperly construct the motivation. Thus, absent further evidence, the Office has clearly failed to meet its *prima facie* burden.

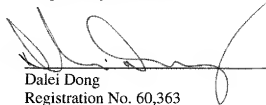
For at least the above reasons Appellants respectfully request that the rejection of Claim 18 be withdrawn.

IV. Conclusion

Appellants submit that the pending claims are allowable over the cited references. Accordingly, Appellants respectfully request that the Board reverse the prior art rejections set forth in the Action. Appellants respectfully submit that no other fees are required in connection with this request. However, in the event it is determined that a further fee is necessary to maintain the pendency of this application, the Commissioner is hereby authorized to charge or credit the undersigned's deposit account number 50-0206.

Respectfully submitted,

By:



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